Again, the Federal Courts of first instance were devised to furnish impartial tribunals for non-residents, whether aliens or citizens of other states; but the experience of non-resident litigants in the Federal Courts sitting in some of our Southern states after the Civil War and until comparatively recent days, led many counsel for foreign plaintiffs deliberately to choose the State Courts in such regions as preferable in respect to certain essentials of justice if not of the Byzantine. That unhappy period has disappeared, but it had its use for purposes of illustration.

In the average American state of to-day, the local Federal Court is not apt to be chosen in preference to the State tribunal because of the certainty of finding an impartial judge in the halls of the one rather than of the other. Counsel for the foreign plaintiff is rather more concerned with finding the ablest judge. In this respect, there is no uniform rule in operation; in one State the local Federal bench may rank far above that of the State within whose bounds it sits, and in another State there may be no choice, or indeed the comparison may be in favor of the State courts. More important still in the choice of forum are the considerations that the nature of his case must present to counsel. If the presentation of his proofs will raise a point of evidence on which the Federal doctrine differs from that of the State,—and there are such points—or a question of "general commercial law" on which the Federal rule is at variance with the pronouncement of the State courts, then the practitioner will choose that jurisdiction whose doctrine favors his case as it will develop on the trial.

These instances show how far we have travelled from the ideas of our fathers, who with Eighteenth Century pragmatism gave us a novel institution to subserve one purpose alone. To-day the original purpose is obscured by a thousand chance considerations of daily occurrence, yet we, being people of the common law, have not abolished the institution which long ago lost its *raison d'etre*. If Professor Montgomery will supplement his very practical manual with discussion of the relative place of our national Courts, as distinct from the operations of their machinery, he will have given something to the student as well as to the practitioner.

Garrard Glenn.

THE PROCEDURE AND LAW OF SURROGATES' COURTS OF THE STATE OF NEW YORK. By WILLIS E. HEATON. Third Edition. Albany: MATTHEW BENDER & Co. 1914. pp. Vol. I, cxix, 1025. Vol. II, xliii, 974.

The present edition of this work has been published on account of the passage of Chapter 443, of the Laws of New York, 1914, entitled "An Act to amend the code of civil procedure, in relation to surrogates and the practice and procedure in surrogates' courts", which act is a revision of the entire Chapter XVIII, relating to these topics, and is the result of the report of commissioners, originally constituting a revision committee of the New York State Surrogates' Association; and, apparently made state appointees by a provision in the appropriation law of 1912 (Chap. 547). The author was for a number of years surrogate of Rensselaer county, was the first chairman of the revision commission, and was thereafter special counsel of the commission, and, as he states, was entrusted with the principal part of the work of revision, and of formulating the new practice, and he should, therefore, be qualified to state what changes were proposed to be effected by the

revision and the reasons for those changes; and his views on these points are expressed in the present edition. This is not the place to consider carefully the merits and demerits of the revision, but it may be said that one of the main purposes thereof appears to have been to increase the jurisdiction of the surrogates' courts, and the power of the surrogates; that the changes made in the procedure are many and important; that some of these changes are undoubtedly advantageous; that the desirability and even the constitutionality of others are, at least, questionable; and that it is by no means certain that the views adopted by the courts with reference thereto will be those expressed in these volumes by the author.

In expressing an opinion upon the merits of the work under consideration it is only fair to bear in mind the author's purpose and plan as declared in his introduction to the first edition, and which have been followed in the present edition. He there states that the work is the "outgrowth of the practical work" in transacting the large business coming to his court; is prepared from classified memoranda of the cases examined during the conduct of this business, which material he hopes will be as useful to the practitioner as it has been to the author; and that "the citations from the cases have been used quite generally in their detached form, with the result that the text may have lost smoothness; but that is better than that the busy lawyer should lose time."

Naturally, a work thus prepared cannot be compared with such a well-known and highly esteemed general treatise as Woerner's Law of American Administration, nor even with several works which might be named and which are limited to the consideration of New York law upon these subjects. What we find is not really the work of an author, but of an editor. It is a compilation. The existing code sections are given in full, with explanation of the changes from former sections when such changes have been made; these are supplemented by insertion of sections from the Decedent Estate Law, Domestic Relations Law, and other statutes where such insertion is needed to make the application of the code sections clear. In connection with these statutory provisions are given excerpts from judicial opinions relating to the topics under consideration; although, unfortunately, there will quite frequently be found, on succeeding pages, extracts from opinions which apparently are flatly contradictory, nothing appearing in the text to indicate that either some change in the statutory law or some marked difference in the facts involved, furnishes a complete explanation of the seemingly conflicting decisions.

There is a large collection of "forms" covering all proceedings likely to be taken, and the index seems to be sufficiently full to render the contents of the volumes easily available.

There is not in the entire work any conspicuous evidence of very thorough knowledge of the history of the origin, procedure, and development of the surrogates' courts of New York, or the courts of other states exercising similar jurisdiction; and, as already indicated, one who desires some systematic and enlightening treatment of these topics, or any intelligent and helpful discussion of the decisions relating thereto, will not always find satisfaction in these two bulky volumes.

On the other hand, Mr. Heaton's actual experience as a surrogate, extending over a period of more than ten years, has given him exceptional opportunities for learning the needs of the profession in this department of law, and if we adopt his view that the purpose of such

a book should be to prevent a busy lawyer from losing time, instead of assisting him to a complete knowledge of the subject, it may readily be conceded that the present work seems to be well adapted for the accomplishment of that purpose.

Henry S. Redfield.

A SELECTION OF CASES ON THE LAW OF INSURANCE. By GEORGE RICHARDS. Second Edition. New York: THE BANKS LAW PUBLISHING CO. 1913. pp. xix, 453.

This work is something more than a case book. To those who are accustomed to the form of collections exemplified in the compilations made in different branches of the law by the late Prof. Keener, Mr. Richards' book will come as a distinct revelation. Types of case books may be divided roughly into two classes. In the first class, the case is practically reprinted verbatim from the original report, with the facts set out at length, sometimes almost *ad nauseam,* followed in due course by the opinion or opinions of the court. To persons beginning the study of law, this form of case book is of the greatest value. The student is taught to pick out the facts of real importance, to winnow the wheat from the chaff, and, so long as the work has not been too extensively annotated by the very frequent predecessor in possession, to draw his own conclusions concerning the correctness of the decision. In the first year's work at any of our modern law schools the vital purpose is to instruct the legal aspirant in the handling of his instruments, and the amount of actual law absorbed is of relatively little importance. The first class of case book is therefore invaluable to instruct the student in the fundamental problem of the lawyer's work, which is to deal with facts so as to be able to understand the cases as actually reported.

As the law student gets on in his investigations, however, he becomes acquainted with the bases of his profession, so that by the time he enters upon his last year of study, he should be to some degree, the master of his tools. The Bar Examinations of his native State loom up with dreadful reality, bristling with questions about the law as it stands, and contemptuously disregarding the reasoning powers of the applicant. He wishes to learn as much law as he can, and it is then that the second class of case book becomes exceedingly useful. While it does not relieve the student of the necessity of using his reasoning powers, this type of case book, of which Mr. Richards' work is a shining example, does assist the reader in saving a great deal of time which he formerly spent puzzling over a multitude of often irrelevant facts. Following the example of Professor Ames, the present author has frequently cut down the original statements, or restated the facts in his own language, but the reasoning of the court is not, of course, in any way altered. Since the subject of Insurance is not usually taken up until near the end of the curriculum, this work should be all the more adaptable for the reasons submitted. The reader can still study from the original sources in the manner of the practitioner, and yet not be compelled to wade through an endless complaint, with pleas to correspond.

The actual cases selected, however, supply a mere skeleton. To fill in this structure the author has outdone even Professor Ames in the volume of his footnotes, which give not only copious citations, but often outline the facts and holding of the case referred to. Another